

EXHIBIT A

ORIGINAL

In The Matter Of:

EVANGELINE RED and RACHEL WHITT

v.

KRAFT FOODS INC.

RED, EVANGELINE - Vol. 1

July 7, 2011

MERRILL CORPORATION

LegalLink, Inc.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EVANGELINE RED and RACHEL
WHITT, on Behalf of
Themselves and All Others
Similarly Situated,

Plaintiffs,

VS.

KRAFT FOODS INC., KRAFT
FOODS NORTH AMERICA, and
KRAFT FOODS GLOBAL, INC.,

Defendants.

) CASE NO.
) CV10-01028-GW (AGRX)

ORIGINAL

DEPOSITION OF EVANGELINE RED

TAKEN ON

THURSDAY, JULY 7, 2011

Reported by: DENISE A. ROSS

CSR No. 10687

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1 Deposition of EVANGELINE RED, taken on behalf
2 of the Defendants, at 633 West 5th Street, Suite 3500,
3 Los Angeles, California, on THURSDAY, JULY 7, 2011, at
4 9:19 a.m., before DENISE A. ROSS, CSR No. 10687.

5

6 APPEARANCES:

7

8 FOR THE PLAINTIFF:

9

 THE WESTON FIRM
 BY: GREGORY WESTON, ESQ.
10 888 Turquoise Street
 San Diego, California 92109
11 (858) 488-1672

12 LAW OFFICES OF RONALD A. MARRON
 BY: RONALD A. MARRON, ESQ.
13 3636 Fourth Avenue
 Suite 202
14 San Diego, California 92103
15 (619) 696-9006

16 FOR THE DEFENDANTS:

17 JENNER & BLOCK LLP
 BY: DEAN N. PANOS, ESQ.
18 353 North Clark Street
 Chicago, Illinois 60654-3456
19 (312) 222-9350

20 JENNER & BLOCK LLP
 BY: KENNETH K. LEE, ESQ.
21 633 West 5th Street
 Suite 3500
22 Los Angeles, California 90071
23 (213) 239-5100

24 ALSO PRESENT:

 JAMES GABRIEL, VIDEOGRAPHER

25

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1 Q. I'm going to ask you a series of questions 09:20:59

2 today. 09:21:00

3 I'd like to first start by asking you whether 09:21:01

4 you've ever given a deposition before? 09:21:03

5 A. This is my first time. 09:21:05

6 Q. Okay. It's your first time. 09:21:07

7 Have you ever given testimony in a court 09:21:08

8 proceeding before? 09:21:11

9 A. Yes. 09:21:13

10 Q. Can you identify what that was? 09:21:13

11 A. It was with Unilever case. 09:21:15

12 Q. In the Unilever case? 09:21:20

13 A. Yes. 09:21:21

14 Q. You testified in a courtroom? 09:21:21

15 A. Not testified. I was in the courtroom. Not 09:21:23

16 testified, but I was in the courtroom. 09:21:27

17 Q. Okay. And that's a case that you filed 09:21:28

18 against the food manufacturer Unilever? 09:21:30

19 A. Yes. 09:21:33

20 Q. And we can talk more about that in a bit. 09:21:34

21 But I just want to be clear. 09:21:37

22 You did not testify; you were just in the 09:21:38

23 courtroom? 09:21:40

24 A. Yes, just in the courtroom, not testified. 09:21:40

25 Q. And you did not provide a deposition in that 09:21:43

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1 Q. Okay. Let me hand you what we'll mark as 09:30:28
2 Red Exhibit No. 1. I'll hand courtesy copies to your 09:30:34
3 lawyers, and then the court reporter will show them to 09:30:41
4 you. 09:30:43

5 MR. WESTON: I think you're going to use the 09:30:55
6 copy that she's going to give you. There you go. I 09:30:56
7 have the same thing, though. 09:31:00

8 THE WITNESS: Okay. 09:31:01

9 (Whereupon, Defendant's Exhibit 1 was 09:31:02
10 marked for identification.) 09:31:05

11 BY MR. PANOS: 09:31:05

12 Q. I've handed you what's been marked as 09:31:06
13 Red Exhibit No. 1. 09:31:09

14 I'm going to ask you: Does this document 09:31:10
15 look like the interrogatories that you received from 09:31:12
16 your lawyers that you responded to? 09:31:14

17 A. Yes, this is the one. 09:31:18

18 Q. Okay. Do you recall providing responses to 09:31:19
19 your lawyers in response to these -- several of these 09:31:21
20 questions? 09:31:25

21 A. Yes. 09:31:26

22 MR. WESTON: Just take a minute to look 09:31:28
23 through it, too. 09:31:29

24 BY MR. PANOS: 09:31:30

25 Q. You can take all the time you want. 09:31:31

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1	MR. MARRON:	You want to help guide her?	09:31:38
2	MR. WESTON:	This part should probably look	09:31:40
3		the most familiar.	09:31:42
4	BY MR. PANOS:		09:31:45
5	Q.	Well, for example, did you provide responses	09:31:46
6		as to where you resided and where you went to high	09:31:48
7		school and those sorts of things?	09:31:51
8	A.	Yes.	09:31:52
9	Q.	Okay. And you provided those responses to	09:31:53
10		your counsel when?	09:31:55
11	A.	Over the phone last week.	09:31:58
12	Q.	Okay. So you went over these questions with	09:32:00
13		them by telephone?	09:32:03
14	A.	Yes.	09:32:07
15	Q.	Okay. Let me ask you a little bit about your	09:32:07
16		educational background.	09:32:11
17		You attended Carson High School in Carson,	09:32:11
18		California; is that correct?	09:32:14
19	A.	Yes.	09:32:15
20	Q.	Is that where you went all four years of high	09:32:16
21		school, or more?	09:32:20
22	A.	Yes.	09:32:20
23	Q.	Yes?	09:32:21
24		Did you graduate?	09:32:22
25	A.	Yes.	09:32:23

1 lawsuit? 10:53:57

2 A. Yes. 10:53:58

3 Q. Do you know what that means? 10:53:58

4 MR. WESTON: Yeah. Don't answer it if in 10:54:11

5 doing so you would have to discuss our attorney-client 10:54:14

6 conversations. So if you can't answer it in a way that 10:54:18

7 doesn't disclose our conversations, then don't answer 10:54:22

8 it. 10:54:24

9 BY MR. PANOS: 10:54:26

10 Q. Do you know what it means to be a class 10:54:27

11 representative? 10:54:29

12 MR. MARRON: Same objection. 10:54:32

13 MR. WESTON: Yeah. 10:54:33

14 MR. PANOS: The answer is either a "yes" or 10:54:39

15 "no." That doesn't disclose any confidentiality. 10:54:40

16 MR. WESTON: You can answer that one "yes" or 10:54:43

17 "no," but don't start giving detailed answers about our 10:54:45

18 conversations. 10:54:49

19 THE WITNESS: No. 10:54:49

20 BY MR. PANOS: 10:54:50

21 Q. You don't know what it means to be a class 10:54:50

22 representative? 10:54:52

23 A. I mean -- 10:54:53

24 Q. I'm sorry. 10:55:10

25 A. Say it again, because I got lost with you 10:55:11

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1 guys. 10:55:13

2 MR. PANOS: What was -- can you give me the 10:55:14

3 previous question and answer, the one that she gave an 10:55:17

4 answer to. 10:55:19

5 MR. WESTON: And then after this, we're going 10:55:19

6 to take another break. 10:55:21

7 THE REPORTER: Hang on one second, please. 10:55:28

8 (Record read as follows:

9 "QUESTION: Do you know what it

10 means to be a class representative?")

11 THE REPORTER: Objections were stated.

12 (Record read as follows:

13 "ANSWER: No.") 10:55:44

14 MR. PANOS: You want to take a break? 10:55:44

15 MR. WESTON: Yeah. 10:55:45

16 MR. PANOS: Okay. That's fine. 10:55:46

17 THE VIDEOGRAPHER: Going off the record, the 10:55:48

18 time is 10:55 a.m. 10:55:49

19 (Recess taken.) 10:55:52

20 THE VIDEOGRAPHER: This marks the beginning 11:17:18

21 of Tape No. 2 in the deposition of Evangeline Red, 11:17:30

22 Volume I. Back on the record. The time is 11:17 a.m. 11:17:34

23 MR. PANOS: Mr. Weston, that was an over 11:17:38

24 23-minute break. Can we try to be courteous of 11:17:44

25 everyone's time here and not take breaks that -- 11:17:48

1 Q. Yes. 11:23:47

2 A. Greg. 11:23:48

3 Q. Okay. Have you ever received any 11:23:50

4 compensation as a result of serving as a class 11:23:56

5 representative? Have you ever received any money? 11:23:59

6 A. No. 11:24:03

7 Q. Do you expect to receive any money? 11:24:03

8 A. No. 11:24:05

9 Q. What about in the Unilever case? Do you 11:24:05

10 expect to receive any monies? 11:24:08

11 A. I didn't expect anything, but I got a -- I 11:24:10

12 got something. 11:24:13

13 Q. What did you get? 11:24:13

14 A. Incentive award. 11:24:15

15 Q. And how much was the incentive award? 11:24:17

16 A. 4,500. 11:24:20

17 Q. You received \$4,500? 11:24:21

18 A. Yes. 11:24:23

19 Q. And you didn't give a deposition in that 11:24:23

20 case? 11:24:25

21 A. No. 11:24:25

22 Q. How many times did you go to court in that 11:24:25

23 case? 11:24:28

24 A. One. 11:24:28

25 Q. Okay. Did you ever answer any discovery 11:24:29

1 A. Financial, no. 11:26:02

2 Q. Can you tell me if you know what products are 11:26:05

3 the subject of the lawsuit you brought? Do you know 11:26:09

4 what they are? 11:26:13

5 A. Yes. 11:26:13

6 Q. Can you identify those for the ladies and 11:26:14

7 gentlemen of the jury? 11:26:17

8 A. Yes. Teddy Grahams -- 11:26:17

9 Q. Okay. 11:26:19

10 A. -- Ritz -- 11:26:20

11 Q. Okay. 11:26:21

12 A. -- Premium Saltines, Honey Maid Grahams, 11:26:23

13 Ginger Snaps -- 11:26:35

14 Q. Okay. 11:26:38

15 A. -- Vegetable Thins. 11:26:38

16 Q. I'm sorry. I didn't mean to cut you off. 11:26:39

17 What was the last one? 11:26:43

18 A. Vegetable Thins. 11:26:44

19 Q. Anything else you recall? 11:26:45

20 A. That's -- that's it. 11:26:46

21 Q. Were there certain varieties or flavors of 11:26:47

22 these products that you bought? 11:26:50

23 A. It's -- Teddy Grahams and Ritz is the most I 11:26:53

24 bought. 11:26:58

25 Q. Okay. When did you start buying -- 11:26:59

1 not rely on those statements in making
2 your purchase decision?")

11:33:48

3 BY MR. PANOS:

11:33:48

4 Q. You may answer.

11:33:48

5 A. Yes.

11:33:49

6 Q. Okay. At the time you started buying the
7 products, I assume you bought them because you liked
8 the taste of them; is that correct?

11:33:50

11:33:54

11:33:56

9 A. Yes.

11:33:58

10 Q. And at least you thought it was a fair enough
11 price that you were willing to buy them; correct?

11:33:58

11:34:01

12 A. Yes.

11:34:04

13 Q. And some of them you purchased, I take it,
14 because you ate them as a child and it was just
15 something that you always had and remembered; correct?

11:34:04

11:34:08

11:34:10

16 A. Yes.

11:34:16

17 Q. Do you know what class of people you're
18 seeking to represent? Do you know who is in the class?

11:34:16

11:34:18

19 A. People who bought the products.

11:34:21

20 Q. Okay. Everywhere? Anywhere?

11:34:23

21 A. Everywhere.

11:34:25

22 Q. Okay. Going back how far?

11:34:26

23 A. Ever since maybe 2000.

11:34:29

24 Q. Okay. And what relief are you seeking for
25 yourself, if you know?

11:34:36

11:34:41

1 A. Just to take out labels that are not honest. 11:34:42

2 You know, if it's not healthy, I don't -- 11:34:52

3 Q. So you want a change in the labeling? 11:34:56

4 A. Yes. 11:34:58

5 Q. Okay. Are you seeking any monetary 11:35:00

6 compensation? 11:35:02

7 A. No. 11:35:02

8 Q. So you're not going to request that any court 11:35:03

9 reimburse you for the cost of any of your -- cost of 11:35:07

10 whatever you purchased? 11:35:09

11 A. I'm not looking into anything. 11:35:10

12 Q. Okay. Do you know what relief you're seeking 11:35:15

13 for the class you seek to represent? 11:35:20

14 A. Question again. 11:35:23

15 Q. My questions are about what you're seeking 11:35:24

16 for yourself. 11:35:27

17 Is there anything that you're seeking on 11:35:28

18 behalf of the class that's different? 11:35:29

19 A. No. 11:35:33

20 Q. So you're not going to seek to have the class 11:35:34

21 compensated -- class members? 11:35:38

22 A. Well, I think they deserve something if -- 11:35:42

23 if -- if they bought the products, at least something 11:35:49

24 towards that. 11:35:52

25 Q. If they bought the product? 11:35:53

1 Q. Yeah. 11:50:53

2 What was your content -- what was your 11:50:54

3 concern or what was your problem with the labeling of 11:50:56

4 the Kraft Foods products at the time you filed this 11:51:04

5 lawsuit? 11:51:05

6 A. I thought it was labeled healthy, and it had 11:51:07

7 the labels were -- I don't know if -- like this 11:51:14

8 product -- 11:51:20

9 Can I show you? 11:51:20

10 Q. You can take -- yeah. 11:51:21

11 A. Like all these, sensible solutions, I 11:51:26

12 would -- and whole grain -- 11:51:31

13 Q. Okay. 11:51:33

14 A. Every time I would buy that, I would look at 11:51:34

15 those; and I assume that's healthy. And then, like, 11:51:37

16 Teddy Grahams, it will say calcium, iron to help support 11:51:43

17 kids' growth development. I already assume that's a 11:51:48

18 healthier product than any products out there, smart 11:51:51

19 choices. Just in the front of the box, it looks healthy 11:51:55

20 already. 11:51:59

21 Q. Okay. Would you agree with me that when you 11:51:59

22 filed this complaint, the thing that you identified as 11:52:01

23 being unhealthful was the fact that it still contained 11:52:04

24 some amounts of trans fat in them; correct? 11:52:10

25 A. Right. 11:52:13

1 Q. Okay. Can you estimate for me approximately 12:54:12
2 how many times a month you bought any of these 12:54:20
3 Teddy Grahams products, including the honey? 12:54:24

4 A. I don't recall. 12:54:28

5 Q. You can't recall? 12:54:30

6 A. Yeah. Several times a year, but I don't know 12:54:31
7 exactly. I can't tell you a number. 12:54:33

8 Q. Okay. Okay. Can you identify for me 12:54:36
9 anything on the packaging that you see in front of you 12:54:43
10 that you think is deceptive or gives you some concern. 12:54:48

11 A. "To help support kids' growth and 12:54:58
12 development," it's a smart choice of food category. 12:55:00
13 That's -- and it says "honey." To me, honey is 12:55:07
14 healthier than -- it's natural. 12:55:11

15 Q. Okay. So let me see. I want to make sure I 12:55:14
16 get your best testimony and then we can -- 12:55:20

17 A. Okay. 12:55:22

18 Q. -- go into it. 12:55:23

19 So the one thing you said was -- that you 12:55:25
20 think was -- 12:55:28

21 In response to my question, you identified 12:55:31
22 "To Help Support Kids' Growth and Development"; 12:55:33
23 correct? 12:55:37

24 A. Uh-huh. 12:55:37

25 Q. And you identified the statement in the 12:55:37

1 bottom corner, "smart choices"; is that correct? 12:55:40

2 A. Yes. 12:55:42

3 Q. And you identified the word "honey" as well? 12:55:42

4 A. Uh-huh. 12:55:47

5 Q. Would you take a look at the next page, which 12:55:50

6 is the -- which purports to be the back panel of the 12:55:54

7 product and one of the other side panels. 12:55:57

8 Is there anything that you see on this side 12:56:02

9 that you think is problematic or deceptive? 12:56:04

10 A. Same thing. In the top right, it will say, 12:56:14

11 "Calcium, iron, zinc to help support kids' growth and 12:56:18

12 development." 12:56:22

13 Q. Okay. 12:56:23

14 A. I would choose that because it has that 12:56:23

15 statement on there. 12:56:26

16 Q. Okay. Anything else? 12:56:26

17 A. That's pretty much it. 12:56:37

18 Q. Okay. All right. Let me ask you this -- 12:56:39

19 turn over to the front page. 12:56:45

20 Is it your testimony that if it didn't 12:56:54

21 say either this box that says "Calcium, iron, zinc to 12:56:58

22 help support kids' growth and development" or "smart 12:57:03

23 choices," you wouldn't have bought the product? 12:57:07

24 A. Now? 12:57:10

25 Q. At the time you bought it. 12:57:11

1 A. Oh, at the time I bought it? 12:57:13

2 Q. Yeah. 12:57:15

3 A. Yeah. I would have preferred choosing this 12:57:15

4 if it did not have -- if it -- yeah, if it did not have 12:57:23

5 it. 12:57:27

6 Q. Okay. Well, let me -- I want to try to be as 12:57:28

7 precise as I can be. 12:57:31

8 A. Okay. 12:57:34

9 Q. And I'll ask you to do the best that you can 12:57:34

10 as well on this. 12:57:38

11 When you purchased Teddy Grahams, do you 12:57:39

12 believe you purchased them because it said "A good 12:57:41

13 source of calcium, iron and zinc to help support kids' 12:57:45

14 growth and development"? 12:57:49

15 A. No, not really. 12:57:50

16 Q. Okay. How about "smart choices"? Same 12:57:50

17 question. 12:57:52

18 A. Smart choices, yes. 12:57:52

19 Q. You think you bought it just because it said 12:57:54

20 "smart choices"? 12:57:57

21 A. Yeah. Other people said smart choices 12:57:58

22 category would be better alternative. 12:58:01

23 Q. Who said that? 12:58:03

24 A. People, friends. 12:58:04

25 Q. Okay. So you were looking to buy products 12:58:06

1 that contained smart choices? 12:58:09

2 A. Yeah, healthier. 12:58:11

3 Q. Do you know when smart choices was put on the 12:58:16
4 label of the product? 12:58:19

5 A. No. 12:58:20

6 Q. If it is shown that smart choices was only on 12:58:22
7 this product for approximately one year, would that 12:58:26
8 indicate to you that you probably bought the product 12:58:28
9 before that was ever indicated on the packaging? 12:58:31

10 MR. WESTON: Objection; hypothetical. It's 12:58:34
11 incomplete. 12:58:37

12 THE WITNESS: Can you repeat it again? 12:58:41

13 BY MR. PANOS: 12:58:43

14 Q. Well, can you -- if it is shown that the 12:58:43
15 product packaging only contained that smart choice logo 12:58:48
16 for less than a year -- and you've testified that you 12:58:51
17 were purchasing this product going back to the mid 12:58:56
18 '90s -- would that indicate to you that you probably 12:58:59
19 purchased the product without any reliance on the smart 12:59:00
20 choice program designation? 12:59:04

21 MR. WESTON: Objection; hypothetical. It's 12:59:06
22 incomplete. And also objection to the term "reliance" 12:59:09
23 as ambiguous between its legal and its common meaning. 12:59:12

24 THE WITNESS: I really don't know if I would 12:59:17
25 have. 12:59:18

1 A. I don't know. 13:15:35

2 Q. When you bought Teddy Grahams, do you know 13:15:41

3 approximately how much you paid per box for those? 13:15:46

4 A. I don't recall. 13:15:49

5 Q. Okay. Do you think you should have paid less 13:15:50

6 for the product? 13:15:58

7 A. I don't know. 13:15:58

8 Q. Okay. All right. Let's switch gears here. 13:15:59

9 You can put that away. 13:16:09

10 Do you know what Honey Maid Grahams are? 13:16:17

11 A. Uh-huh. 13:16:21

12 Q. Sorry. I didn't mean to interrupt your 13:16:22

13 drink. 13:16:25

14 Do you know what Honey Maid Grahams are? 13:16:25

15 A. Yeah. 13:16:27

16 Q. All right. If I have my recollection wrong 13:16:27

17 of your prior testimony, please correct me. 13:16:29

18 I thought you said that was a product you 13:16:32

19 didn't buy as much of as perhaps Teddy Grahams; 13:16:34

20 correct? 13:16:34

21 A. Yes. 13:16:38

22 Q. Was that one of the products you said you 13:16:38

23 purchased rarely? 13:16:41

24 A. Yes. It would be -- sorry. 13:16:42

25 Q. Just a few times? 13:16:43

1	A.	If my mom would ask me -- if she's going to	13:16:45
2		make something like S'mores or something.	13:16:48
3	Q.	S'mores?	13:16:51
4	A.	Yes.	13:16:52
5	Q.	S'mores is a treat that --	13:16:52
6	A.	Yes.	13:16:55
7	Q.	-- that included what products?	13:16:55
8	A.	Honey Graham -- Honey Maid crackers.	13:16:58
9	Q.	And what else?	13:17:02
10	A.	And marshmallow, chocolate.	13:17:03
11	Q.	Like a Hershey's chocolate bar; right?	13:17:08
12	A.	Yes.	13:17:13
13	Q.	You didn't perceive those to be highly	13:17:13
14		nutritious treats, did you?	13:17:15
15	A.	No.	13:17:17
16	Q.	So sometimes your mom had you purchase	13:17:17
17		Honey Maid Grahams for the purpose of maybe giving	13:17:21
18		S'mores to her grandchildren or friends?	13:17:24
19	A.	Yes.	13:17:26
20	Q.	But --	13:17:27
21	A.	Oh.	13:17:28
22	Q.	I'm sorry.	13:17:28
23	A.	Like a party, she says to buy something	13:17:29
24		and -- I don't know. I just don't remember how many	13:17:32
25		times or --	13:17:36

1 Q. Okay. Now, the Honey Maid Grahams product -- 13:17:36
2 when you said you bought it rarely, is there any way 13:17:40
3 you can estimate whether when you said "rarely," you 13:17:43
4 bought it five times over the last ten years? Less 13:17:46
5 than five times? 13:17:49

6 A. Maybe once a year -- probably once a year. 13:17:54

7 Q. And the purpose you bought them was at your 13:17:56
8 mother's request, not for yourself? 13:17:59

9 A. Yeah. I don't really buy that. 13:18:01

10 Q. So Honey Maid Grahams is not something you 13:18:03
11 regularly consume? 13:18:07

12 A. Yeah. No. 13:18:08

13 Q. Just let me show you what we'll have marked 13:18:09
14 as Exhibit 7. 13:18:16

15 THE REPORTER: Six. 13:18:20

16 MR. PANOS: Oh, I'm sorry. Six. 13:18:22

17 Q. I'll hand it to your counsel as well, a copy, 13:18:23
18 so that they can follow along. 13:18:29

19 MR. WESTON: We're going to take a break for 13:18:40
20 about five or eight minutes. 13:18:42

21 MR. PANOS: Can I finish this, or no? 13:18:43

22 MR. WESTON: Well, you're not in the middle 13:18:45
23 of a question now; so I think this is a good time to do 13:18:47
24 it. 13:18:50

25 MR. PANOS: Well, she just handed her an 13:18:50

1 Q. What do you recall -- 13:29:44

2 Can you describe the taste in any way? 13:29:46

3 A. It's a little bit sweet, like with the honey 13:29:48

4 on there, cracker tasting -- regular cracker with honey. 13:29:51

5 Q. Kind of -- 13:29:54

6 A. Wheat type of cracker. 13:29:55

7 Q. Does it have a graham taste to it? 13:29:58

8 A. Yes. 13:30:02

9 Q. These were purchased by you not for yourself, 13:30:03

10 but you said for your mother, usually when she was 13:30:17

11 either making, like -- for example, like a pie crust or 13:30:20

12 something like that -- 13:30:23

13 A. Yes. 13:30:25

14 Q. -- or as a treat for S'mores? 13:30:25

15 A. Treat -- some kind of treat. 13:30:31

16 Q. Do you know what aisle of the grocery store 13:30:33

17 you bought these products on? 13:30:36

18 A. Crackers. 13:30:38

19 Q. Cracker section? Cookie section? 13:30:39

20 A. Cookie, cracker -- I'm not sure exactly. 13:30:42

21 Q. Fair to say that you understood that it was a 13:30:44

22 cookie- or cracker-type product when you bought it? 13:30:47

23 A. Yes. 13:30:50

24 Q. You mentioned it has a honey taste to it; is 13:30:56

25 that correct? 13:30:59

1	A.	A sweet taste, yes.	13:30:59
2	Q.	Do you purchase any other products because of	13:31:06
3	a	honey-type taste?	13:31:09
4		Is that a taste you enjoy?	13:31:12
5	A.	No.	13:31:14
6	Q.	Do you purchase honey for health reasons?	13:31:15
7	A.	Better alternative than sugar.	13:31:20
8	Q.	Why do you say that?	13:31:24
9	A.	It's natural.	13:31:25
10	Q.	Is sugar natural?	13:31:26
11	A.	No.	13:31:28
12	Q.	None of it?	13:31:29
13	A.	Some of them is natural, but it's -- this	13:31:30
14		is honey. Honey is natural.	13:31:34
15	Q.	Do you naturally --	13:31:36
16		Do you buy honey to put on products because	13:31:38
17		you perceive it to be nutritious?	13:31:41
18	A.	I would sometimes put it on tea.	13:31:43
19	Q.	Sometimes?	13:31:46
20	A.	Uh-huh.	13:31:47
21	Q.	What honey do you buy when you buy honey?	13:31:47
22	A.	It doesn't matter. Any type of honey.	13:31:50
23	Q.	Okay. Do you know what makes honey more	13:31:53
24		nutritious in your mind than other sweeteners?	13:31:57
25	A.	No.	13:32:01

1 explain it. 13:33:17

2 Q. Okay. So you perceive there to be a 13:33:18

3 difference between white flour and wheat flour? 13:33:21

4 A. Yes. 13:33:24

5 Q. Okay. Do you perceive white flour to be 13:33:25

6 unhealthy or nonnutritious? 13:33:27

7 A. Not nonnutritious, but it's -- wheat -- wheat 13:33:31

8 is more healthier than white; so -- 13:33:39

9 Q. Okay. Do you attempt to purchase products -- 13:33:43

10 Do you attempt to avoid purchasing products 13:33:47

11 that contain white flour? 13:33:51

12 A. I don't avoid it, but I -- I would choose the 13:33:54

13 wheat products. 13:33:59

14 Q. If you had a choice? 13:34:00

15 A. Yes. 13:34:01

16 Q. Do you know what graham flour is? 13:34:05

17 THE REPORTER: "Bran"? 13:34:12

18 MR. PANOS: Graham. I'm sorry. 13:34:13

19 THE WITNESS: Not necessarily. I don't know. 13:34:15

20 BY MR. PANOS: 13:34:18

21 Q. Can you take a look at -- in Exhibit 6 -- and 13:34:20

22 I recognize that you indicated you very rarely bought 13:34:24

23 this product. 13:34:27

24 But if you would, take a look and tell me 13:34:28

25 what, in your opinion, made this -- is deceptive in the 13:34:35

1 packaging. If you can, identify those things for me. 13:34:43

2 A. I'm sorry? 13:34:49

3 Q. Let me start over. 13:34:50

4 Is there anything on the packaging you find 13:34:51

5 to be deceptive to you? 13:34:54

6 A. It says, "Whole grain, 5 grams, honey, 13:34:56

7 sensible solution, low saturated fat, no cholesterol." 13:35:02

8 Q. Okay. 13:35:07

9 A. Those make me want to buy the product than 13:35:07

10 other alternatives. 13:35:11

11 Q. Let's first start with what you just said. 13:35:14

12 Since you never bought this product for 13:35:17

13 yourself, is it fair to say you didn't rely on these 13:35:19

14 statements when you purchased the product? 13:35:22

15 MR. WESTON: Objection; mischaracterizes the 13:35:24

16 witness's prior testimony. And "reliance" is ambiguous 13:35:25

17 between the legal and the common sense. 13:35:32

18 BY MR. PANOS: 13:35:40

19 Q. Can you answer that? 13:35:40

20 A. Can you rephrase that again? 13:35:42

21 Q. You testified earlier that the only time that 13:35:44

22 you bought this product was at your mother's request; 13:35:47

23 correct? 13:35:47

24 A. Yes. 13:35:50

25 Q. And you bought it at your mother's request 13:35:50

1 Q. Okay. Which is what? 13:39:32

2 A. Low saturated fat, no cholesterol, 5 grams 13:39:34
3 whole grain per serving. 13:39:42

4 Q. So did you understand Kraft to be telling 13:39:44
5 consumers that the reason why Kraft thinks it's a 13:39:46
6 sensible solution for them is because it contains 13:39:49
7 5 grams of whole grain per serving, low saturated fat 13:39:52
8 and no cholesterol? 13:39:56

9 A. Yes. 13:40:01

10 Q. I mean, is that a good thing, that a snack 13:40:02
11 product contains 5 grams of whole grain, no saturated 13:40:19
12 fat and no cholesterol per serving, or is that not a 13:40:23
13 good thing? 13:40:26

14 A. That's a good thing. 13:40:27

15 Q. Does that make it a sensible thing for 13:40:28
16 someone to snack on, in your opinion? 13:40:30

17 A. Yes, sensible solution. 13:40:33

18 Q. Okay. And, of course, there might be 13:40:35
19 consumers who disagree with that; correct? 13:40:36

20 A. Right. 13:40:39

21 Q. Okay. Do you remember any commercial related 13:40:39
22 to Honey Maid Grahams? 13:41:00

23 A. I have. 13:41:10

24 Q. You do? You recall a commercial? 13:41:11

25 A. Yeah, a bee going in the -- I have, but I 13:41:14

1 This would also be one of the products that 13:42:24
2 you rarely purchased, if ever; is that correct? 13:42:26

3 A. Yes. 13:42:29

4 Q. Do you know if you purchased the low fat 13:42:29
5 version versus the regular one at the times you bought 13:42:34
6 it for your mother, or you can't recall? 13:42:36

7 A. I don't remember. 13:42:38

8 Q. The same -- if you look at the box, the same 13:42:38
9 things that you described as indicating to you that the 13:42:40
10 product was healthy, that being the indication of whole 13:42:43
11 grains and sensible solution indication -- same thing 13:42:46
12 as it relates to this package as the Honey Maid regular 13:42:48
13 one that you just testified to? 13:42:51

14 A. Yes. 13:42:53

15 Q. Okay. Is there anything else about this 13:42:54
16 package -- 13:42:58

17 A. No. 13:42:59

18 Q. No? Okay. 13:42:59

19 A. Sorry. 13:43:00

20 Q. I meant to say, is there anything else about 13:43:01
21 this package that you find to be potentially 13:43:04
22 problematic or deceptive? 13:43:07

23 And your answer is? 13:43:10

24 A. No. 13:43:11

25 Q. Do you recall any print advertisement as it 13:43:12

1 A. Yes. 13:45:24

2 Q. All right. You can put that aside. 13:45:24

3 We talked earlier a little bit about 13:45:27

4 Ritz Crackers. 13:45:30

5 Can you describe for me what a Ritz Cracker 13:45:30

6 is, if you can? 13:45:33

7 A. It's a cracker. 13:45:37

8 Q. Okay. What aisle in the grocery store did 13:45:38

9 you buy Ritz Crackers? 13:45:42

10 A. It would be either in the cookie or snacks 13:45:44

11 area. 13:45:47

12 Q. The area where you found the products to be 13:45:48

13 the least nutritious; correct? 13:45:50

14 A. Yes. 13:45:52

15 Q. Why did you buy Ritz Crackers? Were they for 13:45:52

16 your consumption, or was this for others? 13:45:56

17 A. For me. 13:45:58

18 Q. For you. 13:45:59

19 Was there one brand that you bought more than 13:46:00

20 the others? 13:46:04

21 There's, like, the original brand. 13:46:05

22 A. I think there's a whole wheat type of 13:46:07

23 cracker, Ritz. 13:46:10

24 Q. So you bought -- you think you bought the 13:46:11

25 Ritz Whole Wheat one? 13:46:13

1 A. Yes, and the low sodium type. 13:46:15

2 Q. Okay. There's one that was called "low 13:46:18

3 sodium" that's now called "hint of salt." 13:46:22

4 A. Oh. 13:46:25

5 Q. Does that refresh your recollection whether 13:46:25

6 you bought that product as well? 13:46:27

7 A. Hint of salt, I think -- I don't recall. I 13:46:29

8 don't recall if -- 13:46:32

9 Q. Did you buy one that's called "Ritz Crackers 13:46:32

10 Roasted Vegetable"? 13:46:37

11 A. Yes. 13:46:37

12 Q. Did you buy one that's called "Ritz Crackers 13:46:37

13 Reduced Fat"? 13:46:41

14 A. Yes, reduced fat, too. 13:46:41

15 Q. I will tell you that your complaint 13:46:43

16 identifies Ritz Roasted Vegetable, Ritz Hint of Salt, 13:46:44

17 Ritz Reduced Fat and Ritz Whole Wheat. 13:46:52

18 Did you purchase all of those products since 13:46:54

19 19- -- since 2000? 13:46:56

20 A. Yes. 13:46:58

21 Q. Every single one of them? 13:46:58

22 A. I don't know how many, but I recall 13:47:00

23 purchasing those products. 13:47:03

24 Q. Okay. Beginning in 2000; is that correct? 13:47:05

25 A. Yes, even before. 13:47:08

1 your mind -- you know, this version versus ones that 13:50:34
2 you bought in the past. 13:50:39

3 A. I don't remember. 13:50:40

4 Q. Okay. Fair enough. Fair enough. 13:50:41

5 A. Okay. 13:50:43

6 Q. What do you find to be deceptive about this 13:50:43

7 product that you're complaining about? 13:50:52

8 A. Well, this one shows vegetables on there, and 13:50:53

9 it says "real vegetables"; so I assume there's real 13:50:58

10 vegetables on the Ritz Cracker itself. 13:51:02

11 Q. Okay. Do you know whether, in fact, the 13:51:06

12 product is made with real vegetables or not? 13:51:08

13 A. No. 13:51:10

14 Q. You don't know? 13:51:11

15 A. No. 13:51:13

16 Q. "No," there aren't any real vegetables in 13:51:14

17 there; or, "no," you don't know? 13:51:18

18 A. I don't know. 13:51:20

19 Q. Is there a way you think you could determine 13:51:20

20 that if you read the ingredient label? 13:51:23

21 A. Yes. 13:51:25

22 Q. Okay. And you never bothered to do that? 13:51:25

23 A. No. 13:51:27

24 Q. Okay. Now, what did you think when you 13:51:28

25 purchased the product in terms of the vegetable 13:51:31

1 BY MR. PANOS: 13:59:26

2 Q. I'll ask you that question later. 13:59:28

3 Let me show you No. 9. 13:59:31

4 (Whereupon, Defendant's Exhibit 9 was

5 marked for identification.) 14:00:01

6 BY MR. PANOS: 14:00:01

7 Q. Do you recognize what Exhibit 9 purports to 14:00:11

8 be? 14:00:16

9 A. Yes. 14:00:16

10 Q. What is it? 14:00:19

11 A. It's a Ritz Cracker Whole Wheat. 14:00:21

12 Q. Does this appear to be a copy of the type of 14:00:24

13 product of Ritz Whole Wheat cracker that you've 14:00:26

14 purchased in the past? 14:00:31

15 A. Yes. 14:00:33

16 Q. Okay. Can you tell me what about this 14:00:34

17 packaging, if anything, that you find to be deceptive? 14:00:43

18 And you can take a look at the front or the 14:00:53

19 back of it, whatever you need to do to answer the 14:00:55

20 question, please. 14:00:57

21 A. Just looks -- whole wheat -- it looks more -- 14:01:06

22 I don't know. This package looks a little bit more 14:01:11

23 healthier than -- 14:01:14

24 Q. I'm sorry. The package looks more healthier 14:01:20

25 than what? 14:01:23

1 A. This looks health -- looks like a healthy 14:01:23

2 Ritz Cracker over any other product, because it says 14:01:27

3 "whole wheat." 14:01:29

4 Is that your question? 14:01:30

5 Q. I think so, yeah. 14:01:31

6 A. Okay, yeah. 14:01:32

7 Q. Okay. So it looks like a healthier product 14:01:33

8 because -- 14:01:37

9 A. It says "whole wheat." 14:01:37

10 Q. Because it says it's made with -- 14:01:39

11 A. Whole -- 14:01:40

12 Q. -- whole wheat? 14:01:42

13 A. Yeah. 14:01:43

14 Q. Okay. Does it indicate to you how many grams 14:01:43

15 of whole grain are in the product per serving? 14:01:46

16 A. Yes, it does. 14:01:49

17 Q. And what does it say? 14:01:50

18 A. Five whole grain. 14:01:51

19 Q. 5 grams of whole grain -- 14:01:53

20 A. Yes. 14:01:55

21 Q. -- per serving? 14:01:55

22 A. Yes. 14:01:56

23 Q. Okay. Is that a -- in your opinion a good 14:01:57

24 thing or a bad thing, that it contains 5 grams of whole 14:02:00

25 grain? 14:02:04

1 MR. WESTON: Objection; argumentative. 14:04:45

2 THE WITNESS: Yes. 14:04:49

3 BY MR. PANOS: 14:04:50

4 Q. Okay. Now you understood, did you not, that 14:04:50
5 there was a Ritz original cracker that doesn't contain 14:04:54
6 whole wheat; correct? 14:05:00

7 A. Yes. 14:05:04

8 Q. Okay. So you chose to buy the one that at 14:05:04
9 least had some amount of whole grains versus the 14:05:09
10 original brand, which doesn't have any whole grains; is 14:05:11
11 that correct? 14:05:16

12 A. Yes. 14:05:16

13 Q. Okay. Now, you mentioned to me the fact that 14:05:16
14 you thought that the product looked healthy because it 14:05:19
15 mentioned the fact that it contains whole wheat. 14:05:22

16 Is there anything else about the packaging of 14:05:25
17 the product that you think indicates that the product 14:05:27
18 is healthy or -- 14:05:29

19 A. It also has the sensible solution on there, 14:05:30
20 no cholesterol, no saturated fat and 5 whole grains per 14:05:34
21 serving. 14:05:38

22 Q. So tell me why -- what is Kraft saying to 14:05:39
23 you -- 14:05:45

24 What do you think Kraft means when it says 14:05:46
25 it's a sensible solution? 14:05:48

1 product?

14:08:59

2 A. It looks — yes.

14:08:59

3 Q. Okay. Do you know whether that statement is
4 true or not true?

14:09:01

14:09:03

5 A. It's true.

14:09:06

6 Q. Okay. Is there anything else about the
7 package that you see that made you want to purchase the
8 product?

14:09:07

14:09:09

14:09:12

9 A. It has the statement "sensible solution, no
10 cholesterol, low saturated fat."

14:09:12

14:09:15

11 Q. Is it sensible to have a snack product that
12 has no cholesterol and low saturated fat, in your
13 opinion?

14:09:17

14:09:21

14:09:25

14 A. Yes.

14:09:26

15 Q. Okay. And others might disagree with you.
16 Some might think that it's not sensible; correct?

14:09:26

14:09:29

17 A. Yes.

14:09:33

18 Q. Okay. Now, I'll represent to you that the
19 sensible solutions flag wasn't even on the product back
20 in the '90s or early 2000s and mid 2000 when you bought
21 the product.

14:09:33

14:09:36

14:09:40

14:09:44

22 So I assume you'll agree that that had
23 nothing to do with your decision to purchase the
24 product back then?

14:09:45

14:09:48

14:09:51

25 A. Back in the earlier years?

14:09:52

1 Q. Yeah. 14:09:54
2 A. Yes. 14:09:55
3 Q. Let me show you the last version called "Ritz 14:10:17
4 Hint of Salt," and we'll mark this one as Exhibit 11. 14:10:24
5 (Whereupon, Defendant's Exhibit 11 was 14:10:27
6 marked for identification.) 14:10:40
7 BY MR. PANOS: 14:10:40
8 Q. Do you recognize what Exhibit 11 purports to 14:10:41
9 be? 14:10:45
10 A. Yes. 14:10:45
11 Q. What is it? 14:10:46
12 A. It says "Ritz Cracker Hint of Salt." 14:10:47
13 Q. Okay. Does this appear to be a product that 14:10:50
14 you've purchased in the past? 14:10:52
15 A. Hint of salt -- not really the hint of salt. 14:10:58
16 I've never really seen the hint of salt. 14:11:02
17 Q. Okay. So you don't ever recall purchasing 14:11:04
18 this product? 14:11:07
19 A. Not the hint of salt. 14:11:07
20 Q. Which product do you recall purchasing? 14:11:09
21 A. I recall the other, Ritz Cracker Reduced Fat. 14:11:12
22 Q. Okay. 14:11:16
23 A. And -- 14:11:16
24 Q. And the whole wheat? 14:11:18
25 A. Yes, whole wheat. 14:11:19

1	Q.	And the roasted vegetables?	14:11:20
2	A.	Roasted vegetables.	14:11:23
3		I don't recall this hint of --	14:11:25
4	Q.	Okay.	14:11:26
5	A.	Is this a newer one? Is this -- maybe --	14:11:33
6	Q.	All right. Are you familiar with a product	14:11:38
7		known as Vegetable Thins?	14:11:43
8	A.	Yes.	14:11:45
9	Q.	What is that product, if you recall?	14:11:52
10	A.	A cracker, snack substance.	14:11:55
11	Q.	Is it a cracker? Is it a cookie?	14:12:06
12	A.	It's a cracker.	14:12:09
13	Q.	It's a cracker.	14:12:10
14		Do you know what it tastes like?	14:12:12
15	A.	Yes.	14:12:18
16	Q.	What's it taste like?	14:12:21
17	A.	It tastes like crackers with seasoning of	14:12:24
18		vegetables -- some type of vegetables.	14:12:29
19	Q.	Okay. Kind of like an onion, tomato, roasted	14:12:31
20		bell peppery type taste?	14:12:35
21	A.	Exactly.	14:12:37
22	Q.	Why did you buy Vegetable Thins? For what	14:12:39
23		purpose?	14:12:47
24	A.	To snack on, because it looks like the	14:12:47
25		healthiest option there.	14:12:50

1 A. Yes. 14:14:29

2 Q. Okay. What about the product led you to 14:14:30

3 believe that it was at least healthier than, say, for 14:14:41

4 example, potato chips? 14:14:44

5 A. It says "vegetables" on it, and it has the 14:14:45

6 whole vegetables on top of there. 14:14:49

7 Q. Okay.

8 A. And it says "real vegetables." 14:14:52

9 Q. Okay. Did you believe that you were 14:14:54

10 consuming, you know, one recommended serving amount of 14:15:00

11 vegetables by eating one serving size of 14:15:05

12 Vegetable Thins? 14:15:07

13 A. No. 14:15:11

14 Q. And you purchased this product in the snack 14:15:21

15 aisle; is that correct? 14:15:26

16 A. Yes. 14:15:27

17 Q. What other products are in the snack aisle 14:15:27

18 when you bought all these Kraft products we're talking 14:15:33

19 about? 14:15:36

20 Oreo Cookies, for example -- are they in the 14:15:36

21 snack aisle? 14:15:40

22 A. Oreo Cookies, chips, chocolate chip cookies. 14:15:41

23 Q. Junk food? 14:15:45

24 A. Junk food, exactly. 14:15:45

25 Q. Can you think of one print ad that you ever 14:15:54

1 A. Yes. 14:25:49

2 Q. When did you stop buying Ginger Snaps, if you 14:25:49
3 can recall? 14:25:53

4 A. Maybe, again, five years ago or so. I -- I 14:25:53
5 don't recall the dates or times; so I'm just giving you 14:25:56
6 an estimate. 14:26:01

7 Q. Been many, many years? 14:26:02

8 A. A few years, yeah. 14:26:03

9 Q. Okay. So, let's say, perhaps in 2006, you 14:26:05
10 stopped buying them; correct? 14:26:07

11 A. Right. 14:26:09

12 Q. Did you buy them in maybe 2000, 2001? 14:26:09

13 A. Earlier than, I think, too; so -- 14:26:12

14 Q. Did you purchase them for your own 14:26:16
15 consumption or for somebody else? 14:26:18

16 A. For me -- for myself. 14:26:20

17 Q. You view them as sort of a cookie and a 14:26:21
18 treat-type product? 14:26:24

19 A. I would view them as a cookie type. 14:26:25

20 Q. Okay. You didn't view it as a highly 14:26:27
21 nutritious product? 14:26:30

22 A. No.

23 Q. Correct?

24 Did you -- is there anything on this labeling 14:26:33

25 that you think causes it to be deceptive or misleading? 14:26:35

